

20  
NO. 2520.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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HILL COUNTY,

Plaintiff in Error,

vs.

SHAW AND BORDEN COMPANY, a Corporation,  
Defendant in Error.

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Transcript of Record

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Error to the District Court of the United States  
for the District of Montana

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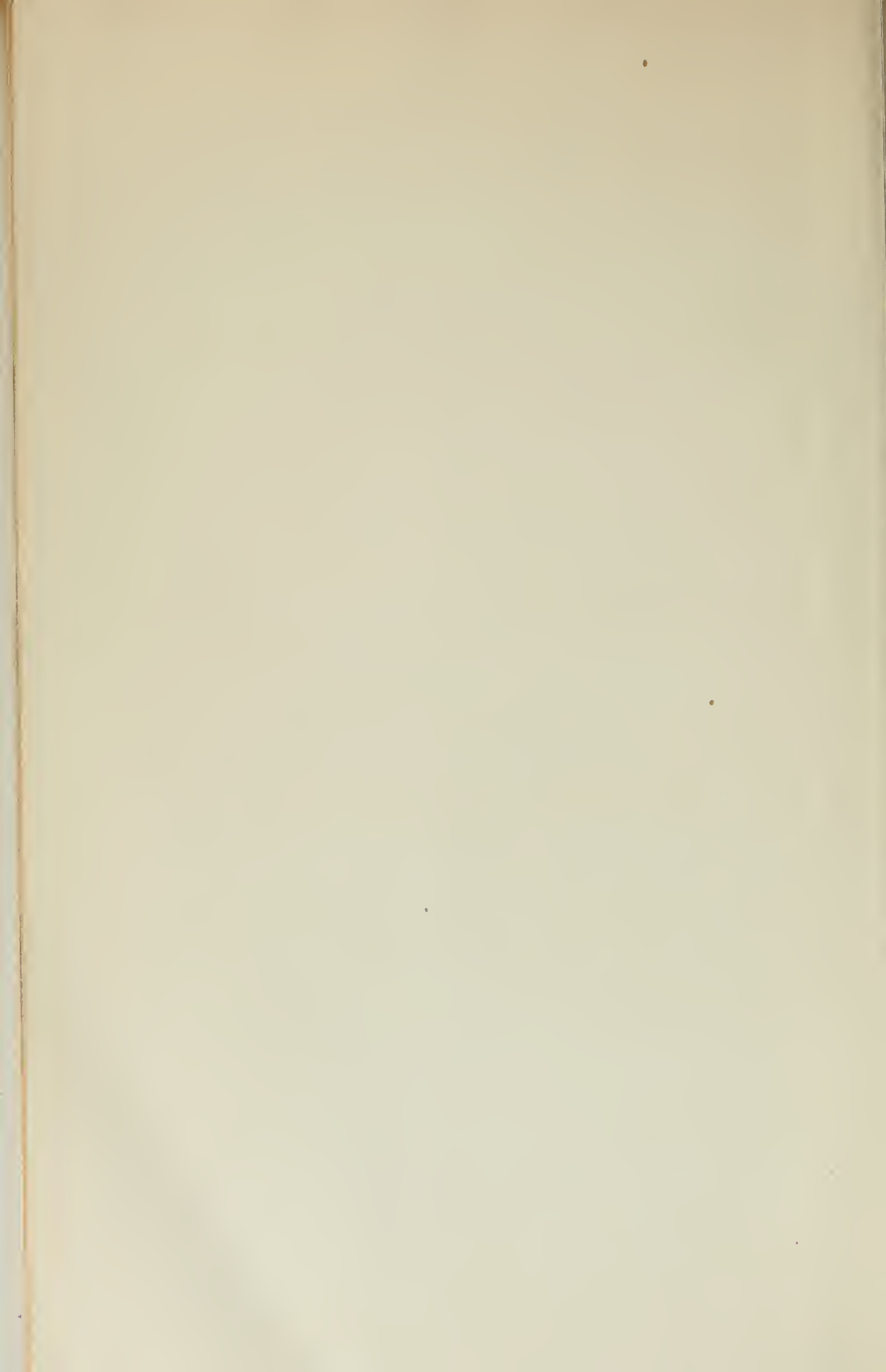
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F. D. Monckton,

Clerk

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Circuit Court of Appeals  
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THE  
JOURNAL OF THE  
ROYAL ANTHROPOLOGICAL INSTITUTE

Volume 27, Part 1

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## Index to the Printed Transcript of Record

	Page
Agreed Statement of Facts.....	30
Answer .....	19
Assignment of Errors .....	47
Bill of Exceptions .....	38
Certificate of Clerk to Judgment Roll .....	37
Certificate of Clerk to Transcript of Record....	59
Citation .....	56
Clerk's Return to Writ of Error .....	55
Complaint .....	2
Demurrer .....	17
<b>EXHIBITS:</b>	
Exhibit "A" to Complaint .....	5
Exhibit "A" to Answer .....	23
Judgment .....	36
Memorandum Opinion of Court .....	35
Order Allowing Writ of Error and Fixing Supersedeas Bond .....	51
Order Extending Time for Filing Transcript....	59
Order Overruling Demurrer .....	18
Petition for Writ of Error and Supersedeas....	45
Praecipe for Transcript .....	57
Reply .....	27
Summons .....	15
Supersedeas Bond .....	52
Writ of Error .....	54



NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

C. A. SPAULDING, Helena, Montana, and

VICTOR R. GRIGGS, Havre, Montana,

Attorneys for Plaintiff in Error.

Messrs. GUNN, RASCH & HALL, Helena, Montana,

Attorneys for Defendant in Error.

---

*In the District Court of the United States in and  
For the District of Montana.*

No. 367.

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

BE IT REMEMBERED that on the 13th day of  
December, 1913, the plaintiff filed its complaint  
herein in the words and figures following, to-wit:

*In the District Court of the United States, District  
of Montana.*

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

COMPLAINT.

The plaintiff complains of defendant and for cause of action alleges:

I.

That it is now and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state.

II.

That the defendant is now and was at all the times herein mentioned a county created, organized and existing under and by virtue of the laws of the State of Montana and a citizen of said state.

III.

That the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of \$3000.00.

IV.

That on or about the 3rd day of March, 1912, the said defendant made and entered into a contract in writing with one B. B. Weldy, proprietor and publisher of a newspaper which had been published in said county for more than six months prior thereto wherein and whereby said Weldy agreed to do certain printing for said county and to sell, furnish and deliver to said county the books and other property described in exhibit "A" hereto attached and made a part hereof.

V.

That thereafter this plaintiff agreed with said Weldy to sell, furnish and deliver to said county



NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.  
Messrs. GUNN, RASCH & HALL, Helena, Montana,  
Attorneys for Plaintiff in Error.

C. A. SPAULDING, Helena, Montana, and  
VICTOR R. GRIGGS, Havre, Montana.  
Attorneys for Defendant in Error.

---

*In the District Court of the United States in and  
for the District of Montana.*

No. 367.

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

BE IT REMEMBERED that on the 13th day of  
December, 1913, the plaintiff filed its complaint  
herein in the words and figures following, to-wit:

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SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

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COMPLAINT.

The plaintiff complains of defendant and for cause of action alleges:

I.

That it is now and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state.

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That the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of \$3000.00.

IV.

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V.

That thereafter this plaintiff agreed with said Weldy to sell, furnish and deliver to said county

the books and other property described in said exhibit "A" and thereupon this plaintiff did furnish and deliver to said county all of the books and other property so described in said exhibit "A".

## VI.

That this plaintiff has never owned nor published a newspaper and has never owned nor operated a printing establishment in the state of Montana, by reason of which the said defendant asserts and claims that the said Weldy was prohibited by section 2897 of the Revised Codes from subletting his said contract with said county, or any portion thereof to this plaintiff and from contracting and agreeing with this plaintiff to furnish and deliver the said books and other property so described in exhibit "A" to said county and denies any liability or obligation to pay this plaintiff or said Weldy for said books or other property or any part thereof and has refused and still refuses to pay any amount whatsoever therefor.

## VII.

That said defendant has since the 8th day of March, 1912, converted said books and other property and the whole thereof to its own use to the damage of this plaintiff in the sum of \$4348.80, the reasonable value of said property.

## VIII.

That at the time of such conversion this plaintiff was the owner and entitled to the possession of said property and the whole thereof.

## IX.

That prior to the commencement of this action this plaintiff demanded of said defendant a return of said property, or payment of the value thereof, to-wit, the sum of \$4348.80, and presented to said defendant an account or claim for the said value of said property, made out in separate items, and in which the nature of each item, as shown by exhibit "A" hereto attached, was stated and in which the value of each of said items was also stated, which said account or claim was verified by the affidavit of an officer of this plaintiff, to-wit, its treasurer, showing that the said account or claim is just and wholly unpaid; that said claim was presented within one year after the last item therein accrued.

## X.

That the board of county commissioners of said county has rejected and disallowed said claim, and refused said demand so made as aforesaid.

WHEREFORE, plaintiff demands judgment against said defendant for the said sum of \$4348.80, besides interest thereon and costs of this action.

GUNN, RASCH & HALL,  
Attorneys for Plaintiff.

STATE OF MONTANA,  
County of Lewis and Clark.—ss.

M. S. Gunn, being first duly sworn, deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action; that he has read said complaint and knows the contents

thereof, and that the same is true to the best of his knowledge, information and belief; that the reason he makes this verification is because there is no officer of the said plaintiff now within the county of Lewis and Clark, wherein affiant resides.

M. S. GUNN,

Subscribed and sworn to before me this 13th day of December, 1913.

(Notarial Seal).

W. W. PATTERSON,

Notary Public for the State of Montana,  
Residing at Helena, Montana.

My Commission expires May 6, 1914.

EXHIBIT "A".

- 131892 3 M. L. L. McMillan Ledger Sheets, 11½x18.
- 131931 1—6 Qr. L. L. Transcribed Index to Liens (1 Printed Head) with Index 14x17.
- 131932 1—6 Qr. L. L. Transcribed Index to Attachments and Writs of Execution with Index (1 Printed Head) 14x17".
- 131933 1—8 Qr. L. L. Transcribed Index to Water Rights, Estrays and Lost Property 2 Separate Forms with Printed Heads and 2 Indexes 14x17.
- 131934 1—6 Qr. Transcribed Index to Official Bonds, Wills and Power of Attorney (3 Separate Single Printed Heads) 14x17.
- 131935 1—6 Qr. Transcribed Index to Quartz, Placer and Annual Work Done on



Mining Claims (6 Printed Heads) 14x  
17.

131936    1—8 Qr. L. L. Transcribed Index to Mort-  
gages Real Property—direct (2 Printed  
Heads) with Index.

1—8 Qr. Ditto Inverse—11½x18.

131937    1—8 Qr. L. L. Transcribed Index to Deeds  
—Grantor.

1—8 Qr. L. L. Transcribed Index to  
Deeds—Grantee.

With Index (2 Printed Heads Each)  
11½x18.

131938    1—8 Qr. Transcribed Misc. Index Direct  
with Index.

1—8 Qr. Transcribed Misc. Index In-  
verse with Index.

(2 Printed Heads Each) 11½x18.

131939    1—6 Qr. Transcribed Index to Assign-  
ments for Benefit of Creditors & Sep-  
arate Property of Married Women  
with Indexes (2 Separate Double  
Heads) 14x17.

131940    1— — Qr. L. L. Transcribed Index to As-  
signments of Mortgages & Leases with  
Index.

(2 Separate Double Printed Heads) Di-  
rect & Reverse, 14x17.

131941    1—6 Qr. L. L. Transcribed Index to  
Transcript of Judgments. Notices of  
Action & Cert. of Sales with Indexes.  
3 Separate Single Printed Heads) 14x  
17.

- 131942 1—6 Qr. L. L. Transcribed Road Record  
Interleaved with Tracing Cloth.  $11\frac{1}{2}$   
x18".
- 131943 1—6 Qr. L. L. Transcribed Index to Mort-  
gages — Personal Property — Direct  
with Index.  
1—6 Qr. Ditto Inverse (2 Separate  
Double Heads Printed)  $11\frac{1}{2}$ x18.
- 131944 1—6 Qr. L. L. Transcribed General Index  
to Court Records—Direct, with (2  
Printed Heads).  
1—6 Qr. Ditto—Inverse  $11\frac{1}{2}$ x18.
- 131945 1—8 Qr. Transcribed Judgment Docket  
with Index (2 Printed Heads)  $11\frac{1}{2}$ x18.
- 131946 1—6 Qr. L. L. Probate Register with In-  
dex (1 Printed Head)  $11\frac{1}{2}$ x18.
- 131947 1—8 Qr. L. L. Transcribed Marriage Rec-  
ord (1 Printed Page)  $11\frac{1}{2}$ x18.
- 131948 1—6 Qr. L. L. Transcribed Index to Mar-  
riages  $11\frac{1}{2}$ x18.
- 132659 1—6 Qr. L. L. Transcribed Index to Arti-  
cles of Incorporation with Indexes—  
 $11\frac{1}{2}$ x18.  
3—Only 1" Smiths Adj. Index Tabs  
Specially Printed HNB, SSB, CNB.  
1—#338— $\frac{3}{4}$ " Majestic Current Binder,  
Lettered.  
1—#358 S Majestic Transfer Binder, Let-  
tered.
- 132128 1—640 PP. L. L. Unfinished Business  
Register Sheets (1 Printed Head) 14x  
17.

- 8      *Shaw and Borden Co., a Corporation,*
- 132129    1—480 PP. Treasurer's Register of Bonds  
(2 Printed Pages).
- 132042    1 Treas. Register of Taxes Collected.  
80 Short Leaves Inserted Between the  
Long Leaves, Short Leaves  $17\frac{1}{2} \times 16$ .
- 131949    300 L. L. Warrant Register Sheets (2 Sets  
Index Sheets—Leather Tabs—5 to set  
 $16\frac{3}{4} \times 13\frac{3}{4}$ .
- 131950    40 School Clerk's Registers—2 Qr. Each  
 $10\frac{1}{2} \times 16$ .  
1—640 Page McMillan Record of Studies  
Completed 1 Alphabetical Index A to Z.
- 136157    1—6 Qr. L. L. Transcribed Index to Re-  
lease of Mortgages—with Indexes 2  
Pages Printed  $14 \times 17$ .
- 134532    2 McMillan Binders L. L. 8 Quire.
- 134533    1 McMillan Binder L. L.
- 134534    2 McMillan Binders 8 Quire.
- 134491    50—Index Stays for Medium Books.  
6795    1 Single Hinge Sheet Holder  $11\frac{1}{2}$ " Springs  
Full Canvas, Lettered  $17 \times 26$  # 21481-D.
- 134535    1—50 Folio Special Improvement Assess-  
ment Roll.
- 135047    3—8 Qr. McMillan Binders for Commis-  
sioner's Proceedings.
- 135354    1—6 Qr. McMillan Binder.  
1 Roll #135—42" Imperial Tracing Cloth.
- 133048    3 M. L. L. McMillan Ledger Sheets.  
3 M.    "            "            "            "
- 133123    1—6 Qr. L. L. Transcribed Index to Re-  
lease of Mortgages with Indexes.



2 Printed Pages, Direct & Inverse  $11\frac{1}{2}$   
x18.

133709 500 L. L. McMillan Ledger Sheets  $11\frac{1}{2}$ x  
18.

133043 4—8 Qr. McMillan Binder—Transcribed  
Deed Records.

3—8 Qr. McMillan Binder—Transcribed  
Mortgage Records.

2—8 Qr. McMillan Binder—Transcribed  
Patents.

2—8 Qr. McMillan Binder—Transcribed  
Water Rights.

2—8 Qr. McMillan Binder—Transcribed  
Miscellaneous.

One 6 Qr. McMillan Tax Sale Record 22x  
 $17\frac{3}{4}$ .

134369 1 Set A to Z Alphabetical Tabs & Stays.

130596 1—6 Qr. Register of Prisoners  $10\frac{1}{2}$ x16.

130597 1—4 Qr. Sheriff's Fee Book 16x21.

130598 1—6 Qr. Sheriff's Report of Boarders 14  
x17.

130599 100 Sheets Sheriff's Report of Boarders  
Ptd. Two Sides.

$\frac{1}{2}$  Dozen Pocket Day Books.

130591 1—2 Qr. Military Roll 7x9.

130592 1—6 Qr. McMillan Index to Plat Books  
Lots 14x17.

130593 1—6 Qr. McMillan L. L. Index Plat Books,  
Lands.

130594 1—6 Qr. Record of Final Proofs  $10\frac{1}{2}$ x16.

130595 700 L. L. Sheets.

48 Index Tabs Special.

- 2 Russia & Canvas Sectional Post Binders.
- 130650    1500 Land Book Sheets—5 Different Ptd.  
              Sheets.
- 2 Russia & Canvas Sectional Post Binders.
- 130587    1—6 Qr. Plain General Record 10½x16.
- 130588    1—6 Qr. Plain Teachers Record 10½x16.
- 130489    1—6 Qr. Plain Trustees Record 10½x16.
- 130649    300 Plain L. L. Sheets.
- 1 Russia & Cord. Sectional Post Binder.
- 130600    500 Rules & Ptd. Pg. Township Sheets.
- 130524    1—4 Qr. General Ledger Index in Front  
              11½x18.
- 130525    1—4 Qr. Register of Bonds 10½x16.
- 130526    1 Treasurer's Petty Cash Book 14x17.
- 130527    1—4 Qr. Register of Vouchers Surrend-  
              ered.
- 130528    1—4 Qr. Treasurer's Monthly Balance  
              10½x16.
- 130529    1—4 Qr. Licenses Collected 14x17
- 130530    1—4 Qr. License Register 10½x16.
- 130531    1—4 Qr. Monthly Balance District School  
              Fund.
- 130532    1—6 Qr. Petty Ledger School District 10½  
              x16.
- 130533    1—6 Qr. Petty Ledger, Acct. with Banks  
              10½x16.
- 130534    1—6 Qr. Treasurer's Memoranda 10½x16
- 130535    1—2 Qr. Treasurer's Tax Sale Record.
- 130536    1—2 Qr. Register of Taxes Collected 27x  
              17.
- 130537    1—2 Qr. Treasurer's Cash Book 28x17.
- 130538    1 Delinquent Tax List 2 Qr. 28x17.

- 130539 200 Treasurer's Monthly Reports Ptd 2  
Sides 10 $\frac{1}{2}$ x16.
- 130540 100 Treasurer's Quarterly Reports Ptd  
Two Sides.  
1—2 Qr. Index to Delinquent Tax Record.
- 130560 1—8 Qr. Plain Probate Record 11 $\frac{1}{2}$ x18.
- 130561 1—8 Qr. Plain Probate Ketters 11 $\frac{1}{2}$ x18.
- 130562 1—8 Qr. Plain Probate Bonds 11 $\frac{1}{2}$ x18.
- 130563 1—8 Qr. Plain Record of Probate Orders  
& Decrees.
- 130564 1—8 Qr. Plain Record of Probate Pro-  
ceedings 11 $\frac{1}{2}$ x18.
- 130565 1—6 Qr. Register of Actions 10 $\frac{1}{2}$ x16.
- 130566 1—8 Qr. Register of Criminal 10 $\frac{1}{2}$ x16.
- 130567 1—8 Qr. Minutes of Proceedings of Dis-  
trict Court.
- 130568 1—8 Qr. Judgment Docket with Index  
10 $\frac{1}{2}$ x16.
- 130569 1—5 Qr. McMillan General Index to Court  
Records.
- 130570 1—5 Qr. McMillan General Index to Court  
Records.
- 130571 1—6 Qr. Probate Register 11 $\frac{1}{2}$ x18.
- 130572 1—6 Qr. Judges Criminal Calendar 10 $\frac{1}{2}$   
x16.
- 130573 1—6 Qr. Judges Civil Calendar 10 $\frac{1}{2}$ x16.
- 130574 1—6 Qr. Judges Probate Calendar 10 $\frac{1}{2}$ x  
16.
- 130575 1—8 Qr. Plain Judgment Book 11 $\frac{1}{2}$ x18.
- 130576 1—8 Qr. Plain Execution Book 11 $\frac{1}{2}$ x18.
- 130577 1—6 Qr. Declarations of Intention In-  
dexed.

12     *Shaw and Borden Co., a Corporation,*

- 130578    1—6 Qr. Naturalization—Final Papers.
- 130579    1—5 Qr. Witness & Jurors Time Books.
- 130580    1—6 Qr. Clerk's Fee Book 21x16.
- 130581    1—4 Qr. Index to Marriages 10½x16.
- 130582    1—6 Qr. Marriage Record 10½x16.
- 130583    1—4 Qr. Register of Adoption Reform  
              School & Asylum.
- 130584    1—6 Qr. Inventory & Appraisement  
              Record.
- 140585    1—4 Qr. Register of Inheritance Tax 18  
              x16.
- 130586    1—5 Qr. Record of Fees Collected 11½x  
              18.
- 130696    1 M. Litho. Juror's Certificates—4 on  
              page.
- 130697    1 M. Witness Certificates—4 on.
- 130319    1—6 Qr. Recorder's Fee & Reception  
              Book.
- 130501    1—8 Qr. Water Right Record #2 11½  
              x18.
- 130502    1—8 Qr. Water Right Record #3 11½x18.
- 130503    1—8 Qr. Mortgage Record #2 11½x18.
- 130504    1—8 Qr. Printed Page Mortgage Record  
              #3.
- 130505    1—8 Qr. Mortgage Record #4 11½x18.
- 130506    1—8 Qr. Patent Record—Desert 11½x18.
- 130507    1—8 Qr. Patent Record Homestead 11½  
              x18.
- 130508    1—8 Qr. Clerk's General Record 11½x18.
- 130509    1—4 Qr. License Register 11½x18.
- 130510    1—8 Qr. Clerk's Reg. of Treas. Receipts.

- 130511 1—8 Qr. Clerk's Reg. of Treas. Disbursements.
- 130512 1—6 Qr. Register of Warrants 20 $\frac{1}{4}$ x17 $\frac{3}{4}$ .
- 130513 1—8 Qr. Index to Deeds—Grantor 14x17.
- 130514 1—8 Qr. McMillan Loose Leaf Index to Deeds Grantee.
- 130515 1—8 Qr. McMillan L. L. Index to Mtg. Property D.
- 130516 1—8 Qr. McMillan L. L. Index to Mtg. Real Property Inventory.
- 130517 1—8 Qr. McMillan L. L. Index to Mtg. Per. Property Inventory.
- 130518 1—8 Qr. McMillan L. L. Index to Mtg. Per. Property Direct.
- 130519 1—6 Qr. McMillan L. L. Index to Attachments and Writs of Execution with Index 14x17.
- 130520 1—6 Qr. McMillan L. L. Index to Liens & Index.
- 130521 1—8 Qr. McMillan L. L. Index to Water Rights, Estrays & Lost Property 14x17.
- 130528 1—8 Qr. McMillan L. L. Miscellaneous Index Direct.
- 130523 1—8 Qr. McMillan L. L. Miscellaneous Index Inverse.
- 130541 1—8 Qr. Deed Record #2 11 $\frac{1}{2}$ x18.
- 130542 1—8 Qr. Index to Assignments of Mortg. & Leases.
- 130543 1—8 Qr. Index to Official Bonds, Wills & Power of Atty.
- 130544 1—8 Qr. Index to Transcript of Judg-



- 14      *Shaw and Borden Co., a Corporation,*  
          ments, Notices of Action & Certificate  
          of Sale 11½x18.
- 130545    1—8 Qr. Index to Quartz Placer & Annual  
          Work Done on Mining Claims 11½x18.
- 130546    1—6 Qr. Index to Assignment for benefit  
          of Creditors and Separate Property of  
          Married Women.
- 130547    1—8 Qr. Record of Bounty Claims 11½x  
          18.
- 130548    1—8 Qr. McMillan L. L. Road Record 11½  
          x18.
- 130549    1—6 Qr. Tax Sale Record with Index at  
          Front 21x18.
- 130550    1—8 Qr. Plain Mortgage Record 11½x18.
- 130551    1—8 Qr. Plain Deed Record 11½x18.
- 130552    1—8 Qr. Plain Miscellaneous Record 11½  
          x18.
- 130553    1—8 Qr. Satisfaction of Mortgage 11½x  
          18.
- 130554    1—8 Qr. Plain Water Right Record 11½  
          x18.
- 130555    1—8 Qr. Plain Record of Mining Loca-  
          tions 11½x18.
- 130556    1—8 Qr. Plain Record of Liens 11½x18.
- 130557    1—4 Qr. Separate Property of Married  
          Women 11½x18.
- 130558    1—8 Qr. Plain Record Order & Decrees  
          11½x18.
- 130559    1—9 Qr. Plain Record of Powers of Atty.  
          11½x18.
- 130590    1—6 Qr. School Road & Tp. Dist. Record  
          & Index.

- 130693 1 L. L. Record Commissioners Proceedings.
- 130698 250 Marriage Licenses & Certificates.
- 130694 1 Special Index to Commissioners Proceedings.
- 130695 1 M. Litho. & Printed General Warrants.  
1 M. Litho. & Printed Bridge Warrants.
- 130695 1 M. Litho. & Printed Road Warrants.  
1 M. " " " Contingent.  
1 M. " " " Poor.

(Indorsed): No. 367. Title of Court and Cause. Complaint. Filed Dec. 13th, 1913. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

That thereafter and on the 13th day of December, 1913, a summons was issued in said cause in the words and figures following, to-wit:

*United States of America—District Court of the  
United States, District of Montana.*

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

ACTION BROUGHT IN THE SAID DISTRICT COURT, AND  
THE COMPLAINT FILED IN THE OFFICE OF THE  
CLERK OF SAID DISTRICT COURT, IN THE CITY OF  
HELENA, COUNTY OF LEWIS AND CLARK.

*The President of the United States of America,  
Greeting:*

TO THE ABOVE NAMED DEFENDANT—Hill  
County, You are hereby summoned to answer the  
complaint in this action which is filed in the office

of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

WITNESS, the Honorable GEO. M. BOURQUIN, Judge of the United States District Court, District of Montana this 13th day of December, in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 138. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

(Seal).

UNITED STATES MARSHAL'S OFFICE,  
District of Montana.—

I HEREBY CERTIFY, that I received the within summons on the 15th day of December, 1913 and personally served the same on the 16th day of December, 1913, on the within named defendant Hill County, by delivering to and leaving with Ever Neilson, Chairman of the Board of County Commissioners of said Hill County, personally, at 26 at His Ranch miles Southeast of Havre, Hill County, in said District, a certified copy thereof, together with a copy of the Complaint, certified to by Geo. W. Sproule, Clerk, attached hereto.



Dated this 16th day of December, 1913.

WILLIAM LINDSAY,

U. S. Marshal.

By CHARLES MORGAN,

Deputy.

(Endorsed): No. 367. Title of Court and Cause. Summons. Filed Dec. 20th, 1913. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

That thereafter and on the 5th day of January, 1914, the defendant filed its demurrer in said cause in words and figures following, to-wit:

*In the District Court of the United States*

*District of Montana.*

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

DEMURRER.

Comes now the above-named defendant and demurs to plaintiff's complaint herein, and for cause of demurrer alleges:

That the complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays that this action be dismissed and that defendant be given judgment against the plaintiff for its costs herein.

VICTOR R. GRIGGS,

County Attorney Hill County and Attorney for  
Defendant.

(Endorsed): No. 367. Title of Court and

18      *Shaw and Borden Co., a Corporation,*  
Cause. Demurrer. Filed Jan. 5, 1914. Geo. W.  
Sproule, Clerk.

That thereafter and on the 16th day of January, 1914, the following order was made in said cause:

*In the District Court of the United States in and  
for the District of Montana.*

No. 367, Shaw & Borden Co. v. Hill County.

This cause came on regularly for hearing at this time upon demurrer to complaint, M. S. Gunn, Esq., appearing for the plaintiff and there being no appearance on behalf of defendant. Thereupon demurrer argued and submitted; and thereupon, after due consideration, demurrer overruled and defendant granted 20 days to answer.

Entered in open court January 16, 1914.

GEO. W. SPROULE, Clerk.

(Seal of Court.)

Attest a true copy.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

That thereafter and on the 24th day of February, 1914, the defendant filed its answer in said cause in words and figures following, to-wit:

*In the District Court of the United States,  
District of Montana.*

SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

ANSWER.

Comes now the above named defendant and for its answer to the complaint of the plaintiff on file herein:

1. Admits the allegations of paragraphs I, II, III, IX and X of said complaint.

2. Admits that on or about the 3rd day of March, 1912, this answering defendant made and entered into a certain contract in writing with one B. B. Weldy, proprietor and publisher of a newspaper which had been published in the County of Hill, Montana, for more than six months prior to the date last aforesaid, a copy of which said contract is hereto annexed, marked Exhibit "A", and hereby made a part hereof. That said Exhibit "A" is the only contract ever entered into by this answering defendant with the said B. B. Weldy.

3. This answering defendant does aver and allege that subsequent to the 3rd day of March, 1912, the same B. B. Weldy sublet to plaintiff that portion of Exhibit "A" hereto attached embracing the items contained in Exhibit "A" attached to plaintiff's complaint, under which contract of subletting the plaintiff agreed to sell, furnish and deliver to the said B. B. Weldy that certain portion of the property mentioned in Exhibit "A" hereto attached set out and described in Exhibit "A" attached to plaintiff's complaint. That thereafter under said agreement with the said B. B. Weldy said plaintiff furnished and delivered as directed by the said B. B. Weldy all and singular the books

and other property described in Exhibit "A" attached to plaintiff's complaint, the same and all thereof being delivered to this answering defendant under the terms of Exhibit "A" hereto attached and not otherwise. That this answering defendant never at any time entered into any contract of any nature or character with plaintiff, nor did this answering defendant at any time purchase or receive from or agree to purchase or receive from the plaintiff any property of any kind whatsoever.

4. That under and by the terms of section 2897 of the Revised Codes of the State of Montana the said B. B. Weldy in and about any subletting of any portion of said contract, Exhibit "A" hereto attached, which he might not be able to execute, was required to sublet the same to some newspaper or printing establishment within the State of Montana competent to execute such work. That notwithstanding said statute, and in contravention thereof, the said plaintiff, as aforesaid, entered into the contract of subletting aforesaid with said Weldy whereby said plaintiff agreed to and did furnish under the direction of the said B. B. Weldy all and singular the items and property set out in Exhibit "A" attached to plaintiff's complaint. And this answering defendant does further allege that at and before said plaintiff so entered into said contract of subletting with said Weldy it, said plaintiff, was notified and advised of the terms of said statute and that any subletting by the said Weldy to the plaintiff of any portion of the work to be done or supplies to be

furnished under Exhibit "A" hereto attached was prohibited by law and would be wholly illegal, but that said plaintiff thereafter, notwithstanding being so advised and with full knowledge of said statute, elected to enter into said contract of subletting with the said B. B. Weldy for the furnishing to him of said supplies and property mentioned in Exhibit "A" attached to plaintiff's complaint, alleging and averring that said statute was unconstitutional and unenforceable, and that it, said plaintiff, would take the chances of recovering upon any contract of subletting so entered into in contravention of law.

5. This answering defendant admits that plaintiff has never owned or published a newspaper and has never owned or operated a printing establishment in the State of Montana.

6. This answering defendant does further aver and allege that subsequent to said 3rd day of March, 1913, and on or about the 29th day of April, 1912, one P. H. Hersey, then and there a resident and tax-payer within the County of Hill, State of Montana, commenced in the District Court of the Twelfth Judicial District of the State of Montana in and for the County of Hill, a certain action wherein said P. H. Hersey was plaintiff and Ever Neilson, Joseph Berthelote and E. C. Tooley, comprising the Board of County Commissioners of the County of Hill, Montana, and J. A. Rose, County Treasurer of Hill County, Montana, were defendants, to enjoin and restrain the allowance and payment to the said B. B. Weldy of any sums



of money out of the county treasury of the County of Hill for any of the items contained in Exhibit "A" attached to defendant's answer, the doing and furnishing of which had been, as hereinbefore set forth, sublet by the said B. B. Weldy to the plaintiff herein; that thereafter such proceedings were had in said cause in said court that a judgment was duly made and rendered therein on the 18th day of November, 1912, perpetually enjoining and restraining all and singular the said defendants named in said action, save and except the County Treasurer of the County of Hill, and their and each of their servants, agents, attorneys, employees and successors in office, from auditing, allowing or approving any accounts or claims of said B. B. Weldy for any work done or supplies furnished by him under Exhibit "A" hereto attached, the items of which were embraced within the portion of said contract sublet to the plaintiff herein, and from directing the issuance of any warrants of the said County of Hill therefor; and perpetually enjoining and restraining the County Treasurer of the County of Hill, and his agents, servants, employees or successors in office, from paying to said B. B. Weldy any moneys of the County of Hill for work done or supplies furnished under said Exhibit "A" hereto attached, the items of which are embraced within that portion of said Exhibit "A" sublet to the plaintiff herein. That thereafter the defendants named in said action appealed from said judgment to the Supreme Court of the State of Montana; and

thereafter such proceedings were had in said cause in said Supreme Court that said judgment was in all respects affirmed, and said judgment ever since such affirmance has been and now is in full force and effect and a final judgment in said cause.

7. This answering defendant denies each and every allegation in said complaint contained except as hereinbefore specifically admitted or denied.

WHEREFORE defendant prays to be hence dismissed with its costs in this behalf incurred.

VICTOR R. GRIGGS,

C. A. SPAULDING,

Attorneys for Defendant.

EXHIBIT "A".

This agreement, made this 8th day of March, 1912, by and between B. B. Weldy, of Chester, Hill County, State of Montana, party of the first part, and the Board of County Commissioners of Hill County, State of Montana, party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants on the part of the said party of the second part, hereinbefore mentioned, hereby covenants and agrees to do and perform all the printing for which the said party of the second part may be chargeable, including, all legal advertising required by law to be made, blanks, blank books, and official publications, the same to be done and performed in a workman like manner, the material used to be of first class quality, and

the same to be delivered within a reasonable time after order has been placed at the various offices at the county seat or elsewhere within the county free of all transportation charges, except as otherwise provided herein.

And the said party of the second part, in consideration of the covenants herein recited being done and performed by the said party of the first part, hereby agrees to pay to the said party of the first part, in county warrants as follows, to-wit:

For blank books, either full bound and flat opening or loose leaf as the said party of the second part may desire, stock number one grade, Byron-Weston, or L. L. Brown Ledger, 40# basis for bound books, 36# basis for loose leaf books, as follows:

Plain, cap size, 8½x14, per quire.....	\$ 1.70
Printed head, cap size 8½x14, per quire.....	2.10
Printed page, cap size, 8½x14, per quire.....	2.95
Plain, demy, size 10½x16, per quire.....	1.80
Printed head, demy size, 10½x16, per quire..	2.20
Printed page, demy size, 10½x16, per quire..	3.10
Plain, med. or D. C. size, 11½x18, per quire..	1.90
Printed head, med. or D. C. or,    per quire..	2.30
Printed page, med. or D. C. 14x17, per quire	3.15

The above are for books of six or eight quire, 80 pages to the quire. For books of less than 6 quire, 12% additional per quire. An extra charge for books requiring an index in front or through the book or canvas covers.

For loose leaf record books, as follows:—  
6 quire medium book, plain, per book com-



plete .....	\$17.00
6 quire medium book, printed head, per book .....	20.20
8 quire medium book, plain, per book.....	18.50
8 quire medium book, printed head, per book .....	21.70

For all books requiring double forms, an extra charge of one-third of the additional charge for a printed head or a printed page over the charge for a plain book.

All of the above books are to be f. o. b. Spokane, Wash.

For all publishing and legal advertising, except commissioners proceedings and rule and figure work, the statutory prices named in section 2897, Revised Codes of Montana, less a discount of Sixty per cent. (60%).

For all rule and figure work, the statutory prices named in section 2897, Revised Codes of Montana, less a discount of fifty per cent. (50%).

For legal blanks, all sizes, the statutory prices named in section 2897, Revised Codes of Montana, less a discount of Forty per cent. (40%).

For stationery printed from letter press forms, as follows:—

	1000	500
Letter heads, 20# bond or ledger paper .....	\$3.35	\$2.00
Memo or note heads, 20# bond or legal paper .....	2.65	1.55
XXX White envelopes, size 6½, good stock .....	2.60	1.50

XXX White envelopes, size 10,		
good stock .....	3.80	2.00
XXX White envelopes, size 12,		
good stock .....	4.00	2.15

For all other work not specified in section 2897, Revised Codes of Montana, not to exceed the prices heretofore charged Chouteau County for similar work.

Said party of the first part further agrees to publish the commissioners proceedings of the said Hill County in the Chester Signal and the several other papers controlled by the said party of the first part within one week after same shall have been furnished by the County Clerk, free of all cost.

And the said party of the first part further agrees to furnish the said party of the second part a good and sufficient bond in the sum of Four Thousand Dollars (\$4,000.00) conditioned upon the faithful performance of the covenants and agreements contained herein on the part of the said party of the first part.

And it is mutually agreed and understood by and between the parties hereto that the covenants herein contained on the part of the said party of the second part shall not be binding on the individual members of the said Board of County Commissioners of Hill County.

Signed in duplicate the day and date above mentioned.

*(Signed)* B. B. WELDY.

BOARD OF COUNTY COMMISSIONERS

HILL COUNTY, State of Montana.

By. (Signed) EVER NIELSEN

Chairman of said Board.

(Signed) JOHN H. DEVINE,

Clerk of said Board.

Due service of the foregoing answer upon us this 24 day of February, 1914, and receipt of a copy thereof is hereby admitted.

GUNN, RASCH & HALL,

Attorneys for Plaintiff.

(Endorsed): No. 367. Title of Court and Cause. Answer. Filed and entered Feb. 24, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 16th day of March, 1914, the plaintiff filed its reply in said cause in words and figures following, to-wit:

*In the District Court of the United States, for the  
District of Montana.*

*(Helena Division).*

SHAW & BORDEN COMPANY, a corporation,

Plaintiff,

v.

HILL COUNTY,

Defendant.

REPLY.

Comes now the above named plaintiff, and for reply to defendant's answer on file herein:

I.

Admits that the contract referred to in Paragraph 2 of said answer was entered into as in said paragraph alleged and that Exhibit "A" attached

to said answer is a true copy of said contract. Denies any knowledge or information sufficient to form a belief as to the allegation that said contract is the only contract ever entered into by defendant and said B. B. Weldy.

## II.

Admits that subsequent to the making of said contract said Weldy sublet to plaintiff that portion of said Exhibit "A" attached to said answer, embracing the books and other property mentioned in Exhibit "A" attached to plaintiff's complaint.

## III.

Admits that the statute referred to in Paragraph 4 of said answer forbade said Weldy to sublet any portion of said contract except to some newspaper or printing establishment within the state of Montana competent to execute such work, and that plaintiff knew of the provisions of said statute prior to said subletting of said contract. Admits that plaintiff has contended that said statute was unconstitutional and unenforceable.

## IV.

Admits the allegations of Paragraph 6 of said answer.

## V.

Denies each and every affirmative allegation in said answer contained not herein specifically admitted or denied.

WHEREFORE, having fully replied, plaintiff

asks judgment as prayed for in its complaint.

GUNN, RASCH & HALL,

Attorneys for Plaintiff.

Service accepted March 16, 1914.

C. A. SPAULDING,

Per V. L. McCARTHY.

STATE OF MONTANA,

County of Lewis and Clark.—ss.

M. S. Gunn, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing reply and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the reason he makes this verification is because there is no officer of said plaintiff now within the County of Lewis and Clark, wherein affiant resides.

M. S. GUNN.

Subscribed and sworn to before me this 14th day of March, 1914.

(Notarial Seal). W. W. PATTERSON,

Notary Public for the State of Montana,  
Residing at Helena, Montana.

My Commission expires May 6, 1914.

(Endorsed): No. 367. Title of Court and Cause. Reply. Filed and entered Mar. 16, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 31st day of July, 1914, there was filed in said cause an agreed statement of facts in words and figures following, to-wit:



30      *Shaw and Borden Co., a Corporation,*  
          *In the District Court of the United States,*  
          *District of Montana.*

SHAW & BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

It is hereby stipulated that the following is a correct statement of the facts in this case:

1. That the plaintiff is and was at all the times mentioned in the complaint a corporation, organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state.

2. That the defendant is now and was at all the times mentioned in the complaint a county, created, organized and existing under and by virtue of the laws of the State of Montana and a citizen of said state.

3. That the amount in controversy in this action exceeds the sum of \$3,000, exclusive of interest and costs.

4. That on or about the 3rd day of March, 1912, the defendant made and entered into a contract in writing with one B. B. Weldy, proprietor and publisher of a newspaper, which had been published in said county more than six months prior thereto, a copy of which contract is attached to and made a part of the answer in this case. That said contract is the only contract ever made by said Weldy with said defendant.

5. That the said Weldy sublet to plaintiff that

portion of said contract embracing the items described in exhibit "A" to the complaint herein and the plaintiff thereupon and thereby agreed with said Weldy to perform such portion of said contract by furnishing and delivering to said defendant the said items of property.

6. That plaintiff by virtue of the said subletting of the said contract and the agreement with said Weldy as aforesaid, did furnish and deliver to said defendant all of the books and other property described in exhibit "A" to said complaint.

7. That this plaintiff has never owned or published a newspaper and has never owned or operated a printing establishment in the State of Montana.

8. That prior to the subletting of said contract by said Weldy, as aforesaid, plaintiff had knowledge of section 2897 of the Revised Codes of the State of Montana, but had been advised by attorneys, whose opinion it sought, that said section was unconstitutional and void, and relying upon such advice and believing the said section void, furnished and delivered the said books and other property to defendant.

9. That subsequent to said 3rd day of March, 1912, and on or about the 29th day of April, 1912, one P. H. Hersey, then and there a resident and tax-payer within the County of Hill, State of Montana, commenced in the District Court of the Twelfth Judicial District of the State of Montana, in and for the County of Hill, a certain action wherein said P. H. Hersey was plaintiff and Ever

Neilson, Joseph Berthelote and E. C. Tooley, comprising the Board of County Commissioners of the County of Hill, Montana, and J. A. Rose, County Treasurer of Hill County, Montana, were defendants, to enjoin and restrain the allowance and payment to the said B. B. Weldy of any sums of money out of the county treasury of the County of Hill for any of the items contained in Exhibit "A" attached to defendant's answer, the doing and furnishing of which had been, as hereinbefore set forth, sublet by the said B. B. Weldy to the plaintiff herein; that thereafter such proceedings were had in said cause in said court that a judgment was duly made and rendered therein on the 18th day of November, 1912, perpetually enjoining and restraining all and singular the said defendants named in said action, save and except the County Treasurer of the County of Hill, and their and each of their servants, agents, attorneys, employees, successors in office, from auditing, allowing or approving any accounts or claims of said B. B. Weldy for any work done or supplies furnished by him under Exhibit "A" hereto attached, the items of which were embraced within the portion of said contract sublet to the plaintiff herein, and from directing the issuance of any warrants of the said County of Hill therefor; and perpetually enjoining and restraining the County Treasurer of the County of Hill, and his agents, servants, employees or successors in office from paying to said B. B. Weldy any moneys of the County of Hill for work done or supplies fur-



nished under said Exhibit "A" hereto attached, the items of which are embraced within that portion of said Exhibit "A" sublet to the plaintiff herein. That thereafter the defendants named in said action appealed from said judgment to the Supreme Court of the State of Montana, and thereafter such proceedings were had in said cause in said Supreme Court that said judgment was in all respects affirmed, and said judgment were since such affirmance has been and now is in full force and effect and a final judgment in said cause. That the opinion and decision of said Supreme Court is reported in Volume 47 of the Montana State Reports at page 132.

10. That the plaintiff was the owner of the property described in exhibit "A" to the complaint at all times before the furnishing and delivery of same to the defendant, pursuant to said subletting and agreement with said Weldy, and the same was on the 8th day of March, 1912, ever since has been and is now of the reasonable value of \$4348.80.

11. That prior to the commencement of this action plaintiff demanded in writing of said defendant a return of said property, or payment of the value thereof, to-wit, the sum of \$4348.80, and presented to said defendant an account or claim for the value of said property, made out in separate items, and in which the nature of each item, as shown by exhibit "A" to the complaint, was stated and in which the value of each of the said items was also stated, which said account or claim

was verified by the affidavit of an officer of the plaintiff, to-wit, its treasurer, according to law; that said claim was presented within one year after the last item therein accrued.

12. That the Board of County Commissioners of said county on December 11, 1913, rejected and disallowed said claim, and refused said demand so made as aforesaid.

13. That the Board of County Commissioners of said Hill County knew prior to receiving said property of the subletting of said contract by said Weldy to plaintiff and received and accepted from said plaintiff the said books and other property with knowledge that the same were being furnished and delivered by plaintiff and that plaintiff was not the owner or publisher of a newspaper published in the State of Montana, or the owner of a publishing establishment in said state, and that said books and other property were sent and shipped from Spokane, Washington, where the business and printing establishment of plaintiff is located.

14. That the said Weldy has never made or presented any claim to said county for said property, or any thereof, or for the value or contract price for said property, or any thereof, and makes no claim to said property, or any thereof, and neither the said county nor the said Weldy has ever paid plaintiff for said property, or any thereof.

And it is stipulated and agreed that the said cause may be submitted to the court for final de-

cision and judgment upon the pleadings and this stipulation.

Dated this 20th day of July, 1914.

GUNN, RASCH & HALL.

Attorneys for Plaintiff.

VICTOR R. GRIGGS,

C. A. SPAULDING,

Attorneys for Defendant.

(Endorsed): No. 367. Title of Court and Cause. Statement of Facts. Filed July 31, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 25th day of September, 1914, the court filed its written opinion in said cause in words and figures following, to-wit:

*United States District Court, Montana.*

SHAW AND BORDEN CO.

vs.

HILL COUNTY.

No. 367.

COURT'S DECISION.

Herein, upon the facts agreed upon which the parties submit this case the court concludes plaintiff is entitled to recover of and from defendant the agreed reasonable value of the merchandise defendant received from plaintiff, viz., \$4348.80 and legal interest from Mar. 8, 1912, and costs. Judgment accordingly.

Sept. 25, 1914

BOURQUIN. Judge.

MEMO.

The contract between Weldy and defendant was legal. In performanec, however, an illegal method was adopted. In such performance

plaintiff delivered merchandise to defendant. Under such circumstances title does not pass. The merchandise is still plaintiff's. Defendant refused a demand for its return. It is the settled law of this state that defendant because thereof must pay the reasonable value of the merchandise.

Morse vs. Granite Co. 19 Mont. 450.

The case cited is the same in principle as this, and is conclusive of plaintiff's right to recover.

(Endorsed): No. 367. Shaw and Borden Co. vs. Hill Co. Memo. Filed Sept. 25, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 25th day of September, 1914, judgment was duly entered in said cause, which judgment is in the words and figures following, to-wit:

*In the District Court of the United States,  
District of Montana.*

SHAW & BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

NO. 367.

JUDGMENT.

This cause having come on regularly for trial before the court without a jury and having been submitted for decision and judgment on the pleadings and the agreed statement of facts filed therein, and the court having heard the arguments of the attorneys for the respective parties and

having duly considered said pleadings and agreed statement of facts, it is now ordered, adjudged and decreed that the plaintiff do have and recover of and from the defendant the sum of \$4621.39 with interest thereon from this date at the rate of eight per cent per annum and costs hereby taxed at the sum of \$27.60.

Dated and entered this 25th day of September, 1914.

GEO. W. SPROULE, Clerk.

(Seal of Court.)

Attest a true copy

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

UNITED STATES OF AMERICA,

District of Montana.—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above entitled action.

Witness my hand and the seal of said Court at Helena, Montana, this 25th day of September, A. D. 1914.

(Seal of Court.)

GEO. W. SPROULE,

Clerk.

By C. R. GARLOW,

Deputy Clerk.

(Endorsed): No. 367. Title of Court and Cause. Judgment Roll. Filed and entered Sept.



38      *Shaw and Borden Co., a Corporation,*  
25, 1914. Geo. W. Sproule, Clerk. By C. R. Gar-  
low, Deputy Clerk.

That thereafter and on the 5th day of October, 1914, defendant presented for settlement its bill of exceptions in said cause, which said bill of exceptions was on said day duly settled and allowed, and is in words and figures following, to-wit:

*In the District Court of the United States,  
Ninth Circuit, District of Montana.*

SHAW & BORDEN COMPANY, a corporation,

vs.

HILL COUNTY,

Defendant.

BILL OF EXCEPTIONS.

Be it remembered that upon the trial of this cause and the submission thereof for decision to the Honorable George M. Bourquin on the 25th day of September, 1914, a jury was waived and said cause submitted upon an agreed statement of facts, which said agreed statement of facts is in words and figures following, to-wit:

*"In the District Court of the United States  
District of Montana.*

SHAW & BORDEN COMPANY, a corporation,

Plaintiff,

vs.

HILL COUNTY,

Defendant.

It is hereby stipulated that the following is a correct statement of the facts in this case:

1. That the plaintiff is and was at all the times



mentioned in the complaint a corporation, organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state.

2. That the defendant is now and was at all the times mentioned in the complaint a county, created, organized and existing under and by virtue of the laws of the State of Montana and a citizen of said state.

3. That the amount in controversy in this action exceeds the sum of \$3000, exclusive of interest and costs.

4. That on or about the 3rd day of March, 1912, the defendant made and entered into a contract in writing with one B. B. Weldy, proprietor and publisher of a newspaper, which had been published in said county more than six months prior thereto, a copy of which contract is attached to and made a part of the answer in this case. That said contract is the only contract ever made by said Weldy with said defendant.

5. That the said Weldy sublet to plaintiff that portion of said contract embracing the items described in exhibit 'A' to the complaint herein and the plaintiff thereupon and thereby agreed with said Weldy to perform such portion of said contract by furnishing and delivering to said defendant the said item of property.

6. That plaintiff by virtue of the said subletting of the said contract and the agreement with said Weldy as aforesaid, did furnish and deliver to said defendant all of the books and other

property described in exhibit 'A' to said complaint.

7. That this plaintiff has never owned or published a newspaper and has never owned or operated a printing establishment in the State of Montana.

8. That prior to the subletting of said contract by said Weldy, as aforesaid, plaintiff had knowledge of section 2897 of the Revised Codes of the State of Montana, but had been advised by attorneys, whose opinion it sought, that said section was unconstitutional and void, and relying upon such advise and believing the said section void, furnished and delivered the said books and other property to defendant.

9. That subsequent to said 3rd day of March, 1912, and on or about the 29th day of April, 1912, one P. H. Hersey, then and there a resident and tax-payer within the County of Hill, State of Montana, commenced in the District Court of the Twelfth Judicial District of the State of Montana, in and for the County of Hill, a certain action wherein said P. H. Hersey was plaintiff and Ever Neilson, Joseph Berthelote and E. C. Tooley, comprising the Board of County Commissioners of the County of Hill, Montana, and J. A. Rose, County Treasurer of Hill County, Montana, were defendants, to enjoin and restrain the allowance and payment to the said B. B. Weldy of any sums of money out of the county treasury of the County of Hill for any of the items contained in Exhibit 'A' attached to defendant's answer, the do-

ing and furnishing of which had been, as hereinbefore set forth, sublet by the said B. B. Weldy to the plaintiff herein; that thereafter such proceedings were had in said cause in said court that a judgment was duly made and rendered therein on the 18th day of November, 1912, perpetually enjoining and restraining all and singular the said defendants named in said action, save and except the County Treasurer of the County of Hill, and their and each of their servants, agents, attorneys, employees, successors in office, from auditing, allowing or approving any accounts or claims of said B. B. Weldy for any work done or supplies furnished by him under Exhibit 'A' hereto attached, the items of which were embraced within the portion of said contract sublet to the plaintiff herein, and from directing the issuance of any warrants of the said County of Hill therefor; and perpetually enjoining and restraining the County Treasurer of the County of Hill, and his agents, servants, employees or successors in office, from paying to said B. B. Weldy any moneys of the County of Hill for work done or supplies furnished under said Exhibit 'A' hereto attached, the items of which are embraced within that portion of said Exhibit 'A' sublet to the plaintiff herein. That thereafter the defendants named in said action appealed from said judgment to the Supreme Court of the State of Montana, and thereafter such proceedings were had in said cause in said Supreme Court that said judgment was in all respects affirmed, and said judgment

were since such affirmance has been and now is in full force and effect and a final judgment in said cause. That the opinion and decision of said Supreme Court is reported in volume 47 of the Montana State Reports at page 132.

10. That the plaintiff was the owner of the property described in exhibit 'A' to the complaint at all times before the furnishing and delivery of same to the defendant, pursuant to said subletting and agreement with said Weldy, and the same was on the 8th day of March, 1912, ever since has been and is now of the reasonable value of \$4348.80.

11. That prior to the commencement of this action plaintiff demanded in writing of said defendant a return of said property, or payment of the value thereof, to-wit, the sum of \$4348.80, and presented to said defendant an account or claim for the value of said property, made out in separate items, and in which the nature of each item, as shown by exhibit 'A' to the complaint, was stated and in which the value of each of the said items was also stated, which said account or claim was verified by the affidavit of an officer of the plaintiff, to-wit, its treasurer, according to law; that said claim was presented within one year after the last item therein accrued.

12. That the board of county commissioners of said county on December 11, 1913, rejected and disallowed said claim, and refused said demand so made as aforesaid.

13. That the Board of County Commissioners of said Hill County knew prior to receiving said



property of the subletting of said contract by said Weldy to plaintiff and received and accepted from said Plaintiff the said books and other property with knowledge that the same were being furnished and delivered by plaintiff and that plaintiff was not the owner or publisher of a newspaper published in the State of Montana, or the owner of a publishing establishment in said state, and that said books and other property were sent and shipped from Spokane, Washington, where the business and printing establishment of plaintiff is located.

14. That the said Weldy has never made or presented any claim to said county for said property, or any thereof, or for the value or contract price for said property, or any thereof, and makes no claim to said property, or any thereof, and neither the said county nor the said Weldy has ever paid plaintiff for said property, or any thereof.

And it is stipulated and agreed that the said cause may be submitted to the court for final decision and judgment upon the pleadings and this stipulation.

Dated this 20th day of July, 1914.

GUNN, RASCH & HALL,

Attorneys for Plaintiff.

VICTOR R. GRIGGS,

C. A. SPAULDING,

Attorneys for Defendant."

Endorsed: "Filed July 31, 1914, Geo. W. Sproule, Clerk."

That the foregoing together with the admissions contained in the pleadings constituted all the facts upon which said cause was submitted to the court for decision and by the court determined. That upon the foregoing agreed statement of facts the court on the 25th day of September, 1914, entered judgment in favor of the plaintiff and against the defendant in manner and form as the same appears of record. To which judgment and to the entry thereof defendant by its counsel then and there duly excepted.

And for as much as the matters aforesaid do not otherwise appear of record defendant prays the court to sign and seal this bill of exceptions and make the same a part of the said record, which is done accordingly this 5th day of October, A. D. 1914.

GEO. M. BOURQUIN,

United States District Judge for the District of  
Montana.

The undersigned as attorneys for the above named plaintiff hereby acknowledge due and timely service of the foregoing proposed bill of exceptions this 2nd day of October, 1914, and hereby stipulate and agree that no amendments will be submitted to such proposed bill of exceptions and that the same may be by the judge of the above entitled court settled, signed and allowed at any time after this date without notice to said plaintiff.

GUNN, RASCH & HALL,

Attorneys for Plaintiff.



Dated Helena, Montana, October 2, 1914.

(Endorsed): No. 367. Title of Court and Cause. Bill of Exceptions. Filed Oct. 5, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 5th day of October, 1914, the defendant filed in said cause its petition for writ of error and supersedeas, in words and figures following, to-wit:

*In the District Court of the United States,  
District of Montana.*

SHAW AND BORDEN COMPANY, a Corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

PETITION FOR WRIT OF ERROR AND SUPERSEDEAS.

Now comes Hill County, the defendant in the above entitled action, and says that on the 25th day of September, 1914, at the April 1914 term of said court, a judgment was rendered upon an agreed statement of facts theretofore submitted in said cause in favor of the plaintiff in the above entitled cause against the defendant for the sum of forty-three hundred and forty-eight and 80/100 dollars, and for costs of suit in the rendition of which said judgment and in the records and proceedings had prior thereto certain manifest errors have intervened to the great prejudice of the said defendant, which errors are specified in detail in the assignment of errors filed with this petition; wherefore the defendant in the above entitled cause, feeling itself aggrieved by the judgment of

the court rendered upon said agreed statement of facts and entered herein, comes now by C. A. Spaulding and Victor R. Griggs, its attorneys, and petitions said court for an order allowing said defendants to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said defendant shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit;

And the said defendant herewith presents its assignment of errors in accordance with the rules of the said United States Circuit Court of Appeals and the course and practice of this honorable court.

And your petitioner the said defendant will ever pray, etc.

C. A. SPAULDING,  
VICTOR R. GRIGGS,  
Attorneys for said Defendant.

(Endorsed): No. 367. Title of Court and Cause. Petition for Writ of Error and Superseedeas. Filed Oct. 5th, 1914. Geo. W. Sproule, Clerk.

That on the said 5th day of October, 1914, the

defendant filed in said cause its assignment of errors in words and figures following, to-wit:

*In the District Court of the United States,  
Ninth Circuit, District of Montana.*

SHAW AND BORDEN COMPANY, a Corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

ASSIGNMENT OF ERRORS.

Comes now the above named defendant on this 3rd day of October, 1914, and says that the judgment entered in the above cause on the 25th day of September, 1914, is erroneous and unjust to the defendant, and assigns and specifies the following errors committed by the court in the rendition and entry thereof.

1. The court erred in holding and deciding that the contract entered into between plaintiff and one B. B. Weldy, although contrary to law and therefore void, was still susceptible of substantial enforcement against this defendant, which substantial enforcement consists of a judgment requiring defendant to pay the value of the goods delivered thereunder.

2. The court erred in holding and deciding that, notwithstanding the conceded invalidity of the contract entered into between plaintiff and B. B. Weldy by reason of the same being in contravention of statute law, plaintiff was entitled to maintain an action for the recovery of property

delivered thereunder or the value thereof from defendant.

3. The court erred in holding and deciding that, notwithstanding plaintiff and defendant were in *pari delicto* in violating the law in entering into the contract of defendant with Weldy and the subsequent contract of subletting by Weldy to plaintiff, under which last mentioned contract plaintiff furnished to defendant the property claimed in this action, plaintiff was entitled to maintain an action against defendant for the recovery of such property or its value.

4. The court erred in holding and deciding that, the contract between plaintiff and Weldy being void, no title to the property delivered thereunder passed to defendant, and that even though such invalidity was by reason of a violation of law in entering into said contract, plaintiff was entitled to recover of defendant such property or the value thereof.

5. The court erred in holding and deciding that plaintiff could maintain an action against defendant upon a transaction arising and growing out of plaintiff's violation of Section 2897 of the Revised Codes of the State of Montana prohibiting contracts for county printing to be sublet to any printing establishment outside the state of Montana.

6. The court erred in holding and deciding that plaintiff was entitled to disaffirm a contract let in contravention of Section 2897 of the Revised Codes of the State of Montana, and which

contract had been fully performed on its part, and thereupon recover whatever of value it had parted with under such contract.

7. The court erred in holding and deciding that plaintiff was entitled to maintain an action at law for the recovery of property parted with by it under a contract entered into in violation of the statutes of the state of Montana.

8. The court erred in holding and deciding that any action could be maintained by plaintiff for the recovery of property parted with by it in a transaction in which plaintiff admitted its violation of the statute law of Montana declaratory of the policy of the state with reference to contracts for the county printing of its municipal sub-divisions.

9. The court erred in holding and deciding that to compel defendant to pay for property delivered to it by plaintiff under a contract entered into in contravention of statutory enactment was undoing what had been wrongfully done, when the effect of the enforcement of such a judgment is to effectuate the performance of such illegal contract.

10. The court erred in holding and deciding that notwithstanding plaintiff's admitted violation of the statute law of Montana in entering into the contract under which it parted with the property received by defendant, and notwithstanding it became and was necessary for plaintiff to show such violation of law in order to establish a cause of action against defendant, still plaintiff was en-



titled to invoke the aid of the courts to recover such property or its value from defendant.

11. The court erred in holding and deciding that notwithstanding the transaction by reason of which plaintiff parted with its property to defendant was one in violation of law, and plaintiff admits in the agreed statement of facts such violation of law, yet plaintiff was entitled to recover such property or its value from defendant.

12. The court erred in holding and deciding that plaintiff could sue for and recover property or its value parted with by it under the terms of a contract entered into by plaintiff with full knowledge that the same was prohibited by the statutes of Montana, and which knowing violation of law it was necessary to prove in order to show how plaintiff parted with its property and how defendant received the same.

13. The court erred in holding and deciding that the agreed statement of facts and the admissions contained in the pleadings were sufficient to justify a judgment in favor of plaintiff.

Wherefore and for divers other errors appearing in the said record and proceedings, said plaintiff in error prays that the said judgment may be reversed, &c.

C. A. SPAULDING,  
VICTOR R. GRIGGS,

Attorneys for Plaintiffs in Error.

(Endorsed): No. 367. Title of Court and Cause. Assignment of Errors. Filed Oct. 5, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 5th day of October, 1914, an order allowing writ of error and fixing supersedeas bond was made and filed in said cause in words and figures following, to-wit:

*In the District Court of the United States,  
Ninth Circuit, District of Montana.*

SHAW AND BORDEN COMPANY, a Corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

And now on this day the said defendant having presented and filed its petition for a writ of error, together with an assignment of errors in accordance with the rules of the United States Circuit Court of Appeals for the 9th Circuit in that behalf, and with the course and practice of this Court, It is Ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, and that the amount of bond and security on said writ of error be and it hereby is fixed at the sum of One Thousand dollars.

Dated October 5th, 1914.

GEO. M. BOURQUIN,  
Judge United States District Court, District of  
Montana.

(Endorsed): No. 367. Title of Court and Cause. Order. Filed and Entered, Oct. 5, 1914. Geo. W. Sproule, Clerk.

That thereafter and on the 20th day of October,

52      *Shaw and Borden Co., a Corporation,*

1914, the defendant filed in said cause its supersedeas bond in words and figures following, to-wit:

*In the District Court of the United States,  
Ninth Circuit, District of Montana.*

SHAW AND BORDEN COMPANY, a Corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

Know all men by these presents that the County of Hill, Montana, as principal, and the United States Fidelity & Guaranty Company, a corporation, organized and existing under the laws of the State of Maryland, as sureties, are held and firmly bound unto the Shaw and Borden Company, a corporation, in the full and just sum of One Thousand dollars to be paid to the Shaw and Borden Company, its certain attorney, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 16th day of October in the year of our Lord one thousand nine hundred fourteen.

Whereas lately at a term of the District Court of the United States in and for the District of Montana in a suit pending in said court between the said Shaw and Borden Company as plaintiff and the said Hill County as defendant, on the 25th day of September, 1914, a judgment was rendered against the said Hill County for the sum of four

thousand three hundred and forty-eight dollars and eighty cents (\$4348.80) and costs of suit, and the said Hill County having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit and a citation directed to the said Shaw and Borden Company citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, within thirty days from the date hereof.

Now the condition of the above obligation is such that if the said Hill County shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

HILL COUNTY, MONTANA,

By EVER NIELSON,

Chairman of its Board of County Commissioners.  
UNITED STATES FIDELITY & GUARANTY  
COMPANY,

By E. C. CARRUTH,

Agent.

(Corporate Seal).

The within supersedeas bond and undertaking on appeal is hereby approved.

Dated October 20, 1914.

GEO. M. BOURQUIN,

Judge.

(Endorsed): Title of Court and Cause. Su-

54      *Shaw and Borden Co., a Corporation,*  
persedeas Bond. Filed Oct. 20, 1914. Geo. W.  
Sproule, Clerk.

That thereafter and on the 21st day of October, 1914, a writ of error was issued in said cause in words and figures following, to-wit:

UNITED STATES OF AMERICA.—SS.

*The President of the United States, to the Honorable the Judge of the District Court of the United States, for the District of Montana, Greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Shaw and Borden Company, a corporation, Plaintiff and Hill County, Defendant, a manifest error hath happened to the great damage of the said Hill County, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause



further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand nine hundred and fourteen.

GEO. W. SPROULE,  
Clerk of the District Court of the United States for  
the District of Montana.

By C. R. GARLOW,  
Deputy Clerk.

(Seal of Court).

Allowed by BOURQUIN, Judge.  
UNITED STATES OF AMERICA,  
District of Montana.—ss.

In obedience to the foregoing writ I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit a true and complete transcript of the record and proceedings in the foregoing entitled cause this.....<sup>21<sup>st</sup></sup> day of November, A. D. 1914.

(*True*) ..... *Geo W. Sproule*  
Clerk of United States District Court, District of  
Montana.

(Endorsed): No. 367. Title of Court and Cause. Writ of Error. Filed October 21, 1914. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

That thereafter and on the 22nd day of October, 1914, citation was issued in said cause upon said writ of error, which citation is in the words and figures following, to-wit:

56      *Shaw and Borden Co., a Corporation,*  
UNITED STATES OF AMERICA.—SS.

*The President of the United States, To Shaw and Borden Company, a Corporation, Greeting:*

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Montana, wherein Shaw and Borden Company, a corporation, is plaintiff and Hill County is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States of America, this 22nd day of October, A. D. 1914, and of the Independence of the United States the One hundred and Thirty-eighth.

GEO. M. BOURQUIN,  
United States District Judge for the District of Montana.

Received copy of the above citation this 23rd day of October, A. D. 1914.

GUNN, RASCH & HALL,  
Attorneys for Shaw and Borden Company, a Corporation.

(Endorsed): Title of Court and Cause. Citation. Filed Oct. 23rd, 1914. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

That thereafter and on the 27th day of October, 1914, the defendant filed its praecipe for a transcript of the record, in words and figures following, to-wit:

*In the District Court of the United States,  
District of Montana.*

SHAW AND BORDEN COMPANY, a Corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

*To the Clerk of the Above Entitled Court,*

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error heretofore allowed by said Court and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Complaint,

Summons,

Demurrer,

Order of January 16, 1914, overruling Demurrer,

Answer,

Reply,

Agreed Statement of Facts,

Memorandum Opinion of the Court,

Judgment,

Certificate of Clerk to the Judgment Roll,

Bill of Exceptions,

Petition for Writ of Error and Supersedeas,

58      *Shaw and Borden Co., a Corporation,*  
Assignment of Errors,  
Order Allowing Writ of Error and Fixing Supersedeas Bond,  
Supersedeas Bond,  
Clerk's Certificate to Transcript of Record,  
Writ of Error,  
Clerk's Return to Writ of Error,  
Praecipe for Transcript of Record,  
Citation.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

C. A. SPAULDING,  
VICTOR R. GRIGGS,  
Attorneys for Defendant.

Due service of the foregoing praecipe upon us and receipt of a copy thereof this 27th day of October, A. D. 1914, is hereby acknowledged and admitted.

GUNN, RASCH & HALL,  
Attorneys for Plaintiff.

(Endorsed): No. 367. Title of Court and Cause. Praecipe. Filed October 27, 1914. Geo. W. Sproule, Clerk.

That on the 11th day of November, 1914, the following order was made in said cause, to-wit:  
SHAW AND BORDEN COMPANY, a corporation,  
Plaintiff,

vs.

HILL COUNTY,

Defendant.

No 367.

This day came the defendant Hill County and moved the court to enlarge the time for filing of the record in this cause with the Clerk of the Circuit Court of Appeals to and including the 15th day of December, 1914.

And it appearing to the court that the transcript of record cannot be completed and compared by the Clerk of said District Court by the return day of the citation heretofore issued in this cause, to-wit, the 21st day of November, 1914, and it further appearing from the facts above set forth, and from other facts, that good cause has been shown for enlarging the time fixed by the rule of the Circuit Court of Appeals for the filing of said transcript beyond the return day of the citation issued in this cause.

It is thereupon by and with the consent of plaintiff's counsel given in open court adjudged and ordered that the time for the filing of said transcript of record with the clerk of said Circuit Court of Appeals be and is hereby extended to and including the 15th day of December, A. D. 1914.

GEO. M. BOURQUIN,

Judge United States District Court, District of Montana.

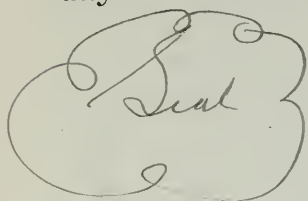
(Endorsed): No. 367. Title of Cause. Order.  
Filed <sup>November</sup> ~~October~~ 11, 1914. Geo. M. Sproule, Clerk.  
UNITED STATES OF AMERICA,  
District of Montana.—ss.

I, George W. Sproule, Clerk of the District Court of the United States for the District of Montana,



do hereby certify the above and foregoing to be a true and complete transcript of record made in accordance with praecipe filed in the cause No. 367 entitled Shaw and Borden Company, a corporation, Plaintiff, vs. Hill County, Defendant, as the same appears on the original records and files of said Court now remaining in my custody and control, <sup>that costs of appeal are \$15.00 and have been paid, and herewith transmit original writ of Error and Citation.</sup>

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in the City of Helena in said District this 21<sup>st</sup> day of November, A. D. 1914.



G. W. Sproule  
Clerk.